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8

9 IN THE UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 PHILLIP ALLEN BAILEY,

15 Defendant.

16 CASE NO. 2:19-CR-0231-WBS

17 STIPULATION REGARDING USE OF
18 VIDEOCONFERENCING DURING CHANGE OF
19 PLEA HEARING; FINDINGS AND ORDER

20 DATE: March 22, 2021

21 TIME: 9:00 a.m.

22 COURT: Hon. William B. Shubb

23

24 **BACKGROUND**

25 On December 19, 2019, a grand jury indicted the defendant, Phillip Allen Bailey, on five counts
26 of a 13-count indictment, along with eight co-defendants. ECF No. 59. This matter is now set for a
27 change of plea on March 22, 2021, as to defendant Bailey.

28 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act
("CARES Act"). The CARES Act empowered the Judicial Conference of the United States and Chief
District Judges to authorize plea and sentencing hearings by video or telephonic conference when
1) such hearings "cannot be conducted in person without seriously jeopardizing public health and
safety;" and 2) "the district judge in a particular case finds for specific reasons that the plea or
sentencing in that case cannot be further delayed without serious harm to the interests of justice." *Id.*,
Pub. L. 116-23 § 15002(b)(2).

1 On March 29, 2020, the Judicial Conference of the United States made the findings required by
2 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the
3 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the
4 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the
5 functioning of the federal courts generally.”

6 On March 30, 2020, the Chief Judge of this District, per General Order 614, also made the
7 findings required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal
8 Procedure and felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure cannot be
9 conducted in person without seriously jeopardizing public health and safety.” On June 29, 2020,
10 September 30, 2020, and January 4, 2021, the Chief Judge of this District, per General Orders 620, 624,
11 and 628, reaffirmed these findings and authorized videoconferencing under the CARES Act for another
12 90 days. Accordingly, the findings of the Judicial Conference and General Orders 614, 620, 624, and
13 628 establish that plea hearings cannot take safely take place in person.

14 In order to authorize change of plea hearings by remote means, however, the CARES Act—as
15 currently implemented by General Order 628—also requires district courts in individual cases to “find,
16 for specific reasons, that felony pleas or sentencing in those cases cannot be further delayed without
17 serious harm to the interests of justice.” General Order 628 further requires that the defendant consent
18 to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
19 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
20 teleconference.

21 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
22 General Order 628 has been satisfied in this case. They request that the Court enter an order making the
23 specific findings required by the CARES Act and General Order 628. Specifically, for the reasons
24 further set forth below, the parties agree that:

25 1) The change of plea hearing in this case cannot be further delayed without serious harm to
26 the interest of justice and given the public health restrictions on physical contact; and

27 2) The defendant waives his physical presence at the hearing and consents to remote hearing
28 by videoconference and counsel joins in that waiver.

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. The Governor of the State of California declared a Proclamation of a State of Emergency to exist in California on March 4, 2020.

2. On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the COVID-19 pandemic.

3. In their continuing guidance, the Centers for Disease Control and Prevention (CDC) and other public health authorities have suggested the public avoid social gatherings in groups of more than 10 people and practice physical distancing (within about six feet) between individuals to potentially slow the spread of COVID-19. The virus is thought to spread mainly from person-to-person contact and vaccines have not been widely distributed to the general population.

4. These social distancing guidelines – which are essential to combatting the virus – are generally not compatible with holding in-person court hearings.

5. On March 17, 2020, this Court issued General Order 611, noting the President and Governor of California's emergency declarations and CDC guidance, and indicating that public health authorities within the Eastern District had taken measures to limit the size of gatherings and practice social distancing. The Order suspended all jury trials in the Eastern District of California scheduled to commence before May 1, 2020.

6. On March 18, 2020, General Order 612 issued. The Order closed each of the courthouses in the Eastern District of California to the public. It further authorized assigned district court judges to continue criminal matters after May 1, 2020 and excluded time under the Speedy Trial Act. General Order 612 incorporated General Order 611's findings regarding the health dangers posed by the pandemic.

7. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District's "critically low resources across its heavy caseload." The report accompanying the Judicial Council's declaration analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the

1 District's caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in
2 weighted filings) and its shortage of judicial resources (the District is currently authorized only six
3 district judges; two of those positions are currently vacant and without nominations). The report further
4 explained that a backlog of cases exists that "can only start to be alleviated" when the CDC lifts its
5 guidance regarding gatherings of individuals.

6 8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1,
7 2020 and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

8 9. On May 13, 2020, General Order 618 issued, continuing court closures until further
9 notice and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

10 10. General Order Nos. 613, 614, 615, 616, 620, 621, 624 have also issued and made findings
11 and implementing temporary emergency procedures in response to the COVID-19 crisis, and these
12 General Orders either remain in effect or have been superseded by a subsequent General Order
13 extending their provisions, with General Order 624 having expired on December 29, 2020. On January
14 4, 2021, General Order 628 issued, authorizing further continuances of hearings and exclusions under
15 the Speedy Trial Act for another 90 days unless terminated earlier.

16 11. Given these facts, it is essential that Judges in this District resolve as many matters as
17 possible via videoconference and teleconference during the COVID-19 pandemic. By holding these
18 hearings now, this District will be in a better position to work through the backlog of criminal and civil
19 matters once in-person hearings resume.

20 12. The change of plea hearing in this case accordingly cannot be further delayed without
21 serious harm to the interests of justice. If the Court were to delay this hearing until it can be held in-
22 person, it would only add to the enormous backlog of criminal and civil matters facing this Court, and
23 every Judge in this District, when normal operations resume.

24 13. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-
25 teleconference. Counsel joins in this consent.

26 IT IS SO STIPULATED.

1 Dated: March 19, 2021

PHILLIP A. TALBERT
Acting United States Attorney

5 Dated: March 19, 2021

6 /s/ DAVID W. SPENCER
7 DAVID W. SPENCER
8 Assistant United States Attorney

9 /s/ MICHAEL L. CHASTAINE
10 MICHAEL L. CHASTAINE
11 Counsel for Defendant
12 PHILLIP ALLEN BAILEY

FINDINGS AND ORDER

13 1. The Court adopts the findings above.

14 2. Further, the Court specifically finds that:

15 a) The change of plea hearing in this case cannot be further delayed without serious
16 harm to the interest of justice; and

17 b) The defendant has waived his physical presence at the hearing and consents to
18 remote hearing by videoconference.

19 3. Therefore, based on the findings above, and under the Court's authority under § 15002(b)
20 of the CARES Act and General Order 628, the change of plea hearing in this case will be conducted by
21 videoconference.

22 IT IS SO FOUND AND ORDERED.

23 Dated: March 19, 2021

24 
25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE